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NOVEMBER 13, 2009

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Governing Board action is required on petitions received requesting a waiver of District criteria. Section 120.542, F.S. and Rule 28-104.002, F.A.C., requires agencies to <u>grant variances and waivers</u> to their own rules when a person subject to the rules files a petition and demonstrates that he or she can achieve, or has achieved, the purpose of the underlying statute by other means <u>and</u> when application of rule would create a substantial hardship or would violate principles of fairness. A "substantial hardship" is defined as a demonstrated economic, technological, legal or other type of hardship to the person requesting the waiver. "Principles of fairness" are violated when the literal application of a rule affects a particular person in a manner significantly different from the way it affects other similarly situated persons who are subject to the rule. A "waiver" is defined as an agency decision not to apply all or part of a rule to the person subject to the rule.	

RIGHT OF WAY OCCUPANCY NEW PERMITS

1. PATRICIA BASSETT Permit Number 13538
Palm Beach County Appl. No. 09-0820-1
(Easement)

AUTHORIZING: PROPOSED DOCK WITH ACCESS RAMP AND EXISTING FENCE ENCLOSURE ENCROACHING 12' (40' FROM TOP OF BANK) WITHIN THE NORTH RIGHT OF WAY OF HILLSBORO CANAL AT THE REAR OF 5968 VISTA LINDA LANE (LOT 9, BLOCK 1, BUENAVISTA).

LAST DATE FOR BOARD ACTION: DECEMBER 10, 2009

2. DEL RIO HOLDING CO. LLC Permit Number 13539
Miami-Dade County Appl. No. 09-0909-1
(Easement)

AUTHORIZING: REPAIR TO 30 LINEAR FEET OF EXISTING UNPERMITTED SEAWALL AND INSTALLATION OF RIP-RAP 10 FEET ALONG THE WEST END AND EAST END WITHIN THE RIGHT OF WAY OF C-4 AT THE REAR OF 3591 NW 20TH STREET (LOTS 341 AND 342, GRAPELAND HEIGHTS, 2ND SECTION).

LAST DATE FOR BOARD ACTION: NOVEMBER 13, 2009

3. JEFFERY AND VICTORIA KOCH Permit Number 13542
Broward County Appl. No. 09-0901-4
(Fee)

AUTHORIZING: APPROXIMATELY 70 LINEAR FEET OF AN EXISTING BULKHEAD, THE PROPOSED CONSTRUCTION OF A DOCK WITH LIFT, WATER AND ELECTRICAL SERVICE LOCATED WITHIN THE EASTERLY RIGHT OF WAY OF C-14 AT THE REAR OF 1271 SE 5TH AVENUE (LOT 42, BLOCK 2, HIGH RIDGE ESTATES).

LAST DATE FOR BOARD ACTION: NOVEMBER 13, 2009

4. CANAL GROVES CONDOMINIUM Permit Number 13537
Broward County Appl. No. 09-0903-1
(Easement)

AUTHORIZING: EXISTING SEAWALL WITH 2 MARGINAL DOCKS AND A PROPOSED FINGER PIER WITH 2 MOORING PILES WITHIN THE SOUTH RIGHT OF WAY OF THE DANIA CUT-OFF CANAL AT THE REAR OF 3211 SW 44TH STREET.

LAST DATE FOR BOARD ACTION: DECEMBER 10, 2009

RIGHT OF WAY OCCUPANCY NEW PERMITS

5. JAMES AND SAUNDRA NAIRN
Broward County

Permit Number 13543
Appl. No. 09-0902-3
(Fee)

AUTHORIZING: EXISTING FENCE ENCLOSURE TO BE EXTENDED AND ENCROACH 49 FEET AND THE REMOVAL OF ALL OTHER FENCING WITHIN THE NORTH RIGHT OF WAY OF C-13 AT THE REAR OF 3650 NW 39TH STREET (LOT 13, BLOCK 27, ORIOLE ESTATES SECTION 3).

LAST DATE FOR BOARD ACTION: NOVEMBER 13, 2009

RIGHT OF WAY OCCUPANCY PERMIT MODIFICATIONS

1. CITY OF PLANTATION
Broward County

Permit Number 13308
Appl. No. 09-0901-1M
(Easement)

AUTHORIZING: EXTEND PREVIOUSLY-AUTHORIZED LINEAR PARK
CONSISTING OF ASPHALT PATH, LANDSCAPING, BENCHES AND ACCESS
GATE WITHIN THE SOUTH RIGHT OF WAY OF C-12 FROM NW 47TH
AVENUE TO IMMEDIATELY EAST OF FLORIDA'S TURNPIKE.

LAST DATE FOR BOARD ACTION: NOVEMBER 13, 2009

2. VICKY L. SLOAN
Broward County

Permit Number 13480
Appl. No. 09-0901-2M
(Easement)

AUTHORIZING: EXISTING LANDSCAPING CONSISTING OF ARECA PALM
HEDGE AND BLACK OLIVE TREE LOCATED LANDWARD OF EXISTING
PREVIOUSLY-AUTHORIZED FENCE WITHIN THE NORTH RIGHT OF WAY
OF THE NORTH NEW RIVER AT THE REAR OF 11700 TARA DRIVE.

LAST DATE FOR BOARD ACTION: DECEMBER 10, 2009

**RIGHT OF WAY OCCUPANCY PERMIT REQUESTS WITH
WAIVER OF DISTRICT CRITERIA**

1. Consideration of a request by **David Fox** (Application Number 09-0723-1, Permit Modification Number 13385) for issuance of a modification to Right of Way Occupancy Permit Number 11385 and Waiver of the District's criteria to allow a portion of an existing fence enclosure, shed, trees and hedges within 40 feet of the top of the canal bank; and, an existing dock addition with buried water service, an existing patio and asphalt area within the District's southerly right of way of C-16 at the rear of 1201 N.W. 13th Avenue to remain. Location: Palm Beach County, Section 20, Township 45 South, Range 40 East.

The applicant's request for waiver of the District's criteria which governs the placement of permanent and/or semi-permanent above ground facilities within 40 feet of the top of the canal bank within Works or Lands of the District is based on substantial hardship and principles of fairness. The applicant asserts he was not aware that some of the encroachments were placed within the District's right of way, until a recent District boundary survey differed from the applicant's survey. The applicant is meeting with the District's survey staff to discuss boundary locations. Applicant states that in order to remove and/or relocate the encroachments would be a financial burden and the District's Operations Resource Management staff has determined that the proposed use will not significantly interfere with the District's access and ability to perform necessary construction, alteration, operations and maintenance activities, so the purpose of the underlying statute will be achieved.

The applicant's petition has been reviewed by the Office of Counsel for compliance with the applicable legal requirements. Pursuant to Section 120.542(6) F.S., notice of the petition was provided to the Department of State and was published in *Volume 35, Number 35* of the *Florida Administrative Weekly* on *September 4, 2009*. No public comments were received.

Therefore, staff recommends **approval** of the issuance of a Modification to Right of Way Occupancy Permit Number 11385 and **approval** of the petition for Waiver of the District criteria which governs the placement of permanent and/or semi-permanent above-ground facilities within 40 feet of the top of the canal bank with Works or Lands of the District.

(Fee & Easement)
